December 13, 2011

Aiding Disabled, Nonprofits Rake in State Money

By RUSS BUETTNER

Every day across New York State, thousands of part-time workers visit the homes of developmentally disabled people to teach them simple tasks, like grooming or how to take a bus.

For their work, which requires no special credentials, the employees typically earn $10 to $15 an hour.

But when the nonprofit organizations that employ those workers bill the state, they collect three and four times that amount — with some having received as much as $67 an hour.

Spending on this little-known home care program, called Community Habilitation, has soared in recent years, creating multimillion-dollar surpluses at some nonprofit agencies and eye-popping salaries and benefits for those who run them.

And it helps explain how New York's costs of caring for developmentally disabled people have ballooned in recent years, creating the nation's most generous system of Medicaid-financed programs, with little scrutiny of its efficiency or results.

Indeed, New York reimburses the nonprofit providers for home care visits for the developmentally disabled at such beneficial rates — far more than for similar services here or in other states — that the money has propped up failing nonprofit providers and built juggernauts out of modest ones.

Esther Lustig, executive director of a Brooklyn nonprofit organization that has become a major provider of the home care visits, saw her compensation double, to nearly $400,000, over two years.

Lynne Brush, a retired social worker who served as chairwoman of a nonprofit provider in Kingston, N.Y., said it nagged at her conscience that her organization was able to collect so much more than it paid its workers. "I lost sleep over the fact that we were making money hand over fist," Ms. Brush said. "I don't like a system that makes money off poor people."

The home care program has been described in official documents as "the linchpin" of the state's plans for services to developmentally disabled people, those with conditions like cerebral palsy, autism and Down syndrome.

Its aim is to help the developmentally disabled build basic life skills so that they do not have to live in state-financed group homes and can stay with their families or by themselves. The tasks the program sets out to teach, like brushing teeth or communicating in accepted ways, can be arduous to master yet life-changing for those who learn them.

Over the past three years, spending on the program has risen more than 40 percent, to $183 million last fiscal year. And like much of New York's system for the developmentally disabled, it gives significant discretion over how much public money should be spent to the nonprofit providers.

The state allows the providers, for example, to assess how many hours of care a week each developmentally disabled person's condition warrants. Other states typically have independent entities make that determination, given the obvious incentive to nonprofit organizations to overprescribe services, said Allan I. Bergman, a Chicago-based consultant to providers of services to the developmentally disabled.

"In the old days, we would say it's the fox guarding the hen house," Mr. Bergman said.

Until two years ago, each nonprofit provider negotiated with the state for its reimbursement rate. The state phased in regional rates, which are all about $40 an hour. During the phase-in period, some providers received far more, as much as about $67 an hour for those that claimed high expenses.

The providers also decide how much to pay their workers. One upstate provider last year advertised starting pay of $9 an hour while collecting four times that much from the state.

The nonprofit providers have limited expenses beyond the cost of hourly workers. They must generate brief monthly summaries on each person's progress. And they have few overhead expenses: The employees typically travel from their homes to the homes of the developmentally disabled, so little office space is needed.

After repeated inquiries from The New York Times, Courtney Burke, the commissioner of the State Office for People With Developmental Disabilities, acknowledged that the structure had led to runaway costs.

Ms. Burke, whom Gov. Andrew M. Cuomo brought in this year to overhaul the agency, is proposing that the state abandon the fee-for-service reimbursement system now in place for services to the developmentally disabled.

It has become clear, she said, that some nonprofit providers have taken advantage of it.

"They basically try and line their pockets by billing as much as possible — the more people and the more services, the more they line their pockets," Ms. Burke said in an interview. She said her goal was to change "the incentives in the system, to be focused on not quantity, but quality."

Jeff Wise, president of the New York State Rehabilitation Association, which represents nonprofit providers, said that looking at a single program in isolation could be misleading.

"The global picture is one that shows that, at the end of the day, the vast majority of providers are juggling various programs and rates to keep their agencies viable," Mr. Wise said.

The rate for the home care visits to the developmentally disabled here exceed those of similar services. Companies that dispatch home health aides to help people with other types of disabilities, along with senior citizens, for example, charge Medicare and others a median rate of $21 an hour in New York, according to an annual survey by Genworth Financial, an insurance company that specializes in long-term care.

Mr. Bergman, speaking of the New York developmentally disabled home care program, said, "I think those are very, very high numbers for that kind of a service."

The revenue pouring in from the home care program to nonprofit providers has helped make some executives quite comfortable.

Ms. Lustig, executive director of Human Care Services for Families and Children, a small organization in Brooklyn, which became the second-largest provider in the program, began working at the agency as a part-time assistant director who made $19,000 a year in 2003, tax records show. But as the agency expanded its home care services, its revenues swelled; Ms. Lustig, now 57, took on the role of full-time executive director in 2005 and now earns nearly $400,000. Ms. Lustig also used Medicaid money to hire her daughter at a salary of $67,000 just after she graduated in 2009 from New York University.

Last year, Human Care billed the state nearly $30,000 for each of its 257 clients. That is almost twice the state average, records show. Most of its clients are developmentally disabled children, which means that Human Care can, in some cases, simply pay a relative to teach the client the tasks rather than hire an employee to do so.

Ms. Lustig said her compensation had increased as a result of her performance and Human Care's growth. Her organization is "very frugal," she said, adding that its home care program is saving Medicaid the millions of dollars it would have cost to place participants in group homes.

She also defended the hiring of her daughter to fill in as the No. 2 person managing the provider's 38 beds in group homes and apartments. The daughter, who had studied psychology and interned at a legal service for developmentally disabled people, held the job for a year until she entered Yale Law School.

"She was very highly qualified for the job," Ms. Lustig said.

Last year, Human Care recorded a $2.6 million surplus on the $7.4 million it billed the state under the program. That increased its overall cash on hand to $8 million, about half its total annual revenue. Ms. Lustig said her accountants had recommended maintaining a surplus of that size.

But after months of inquiries from The Times, the Office for People With Developmental Disabilities recently referred Human Care to the State Office of the Medicaid Inspector General for investigation, a spokesman for the development disabilities agency, Travis Proulx, said.

"Any surplus that is generated should be immediately reinvested directly into existing programs and services," Mr. Proulx said.

March 22, 2012

State Faults Care for the Disabled

By DANNY HAKIM

ALBANY — Nearly 300,000 disabled and mentally ill New Yorkers face a "needless risk of harm" because of conflicting regulations, a lack of oversight and even disagreements over what constitutes abuse, according to a draft state report obtained by The New York Times.

In 2010, the number of abuse accusations at large institutions overseen by the State Office for People With Developmental Disabilities outnumbered the beds in those facilities — a sign of trouble in buildings where many of the state's most vulnerable residents are housed, and where the state has repeatedly had trouble with abusive employees and unexplained injuries and deaths among residents, according to the report.

The report was commissioned by Gov. Andrew M. Cuomo in response to a Times investigation last year into problems of abuse, neglect and fraud in state homes and institutions for the developmentally disabled. A draft of the report began circulating in October, but has not yet been released to the public; people frustrated by the delay separately provided to The Times an executive summary and a bound copy drafted in December.

Problems were found at all six state agencies that provide residential service to children and adults with an array of disabilities, mental illnesses or other issues that qualify them to receive specialized care by the state.

According to the report, a regulatory maze has complicated and in some cases constrained the state's response to claims of abuse. At one agency, the police are summoned if "there is reason to believe that a crime has been committed," while another agency does so only if a potential felony has been committed. A third agency turns to law enforcement only if a local district attorney has "indicated a prior interest," the report said.

The Cuomo administration has expressed concern about issues identified in The Times and addressed by the report. Over the past year, the governor has forced the resignations of the commissioner of the Office for People With Developmental Disabilities and the top official at the State Commission on Quality of Care and Advocacy for Persons With Disabilities, and he has moved to fire 130 employees involved in accusations of serious episodes of abuse or neglect.

The administration has also taken a number of steps to shore up oversight and care of the developmentally disabled, putting in place new rules for drug testing and criminal background checks of staff members who work with the vulnerable.

"The draft report was the subject of a cabinet and press briefing in October, and we are currently working on a transformational reform plan based on the report that will be announced soon," said Richard Bamberger, the governor's communications director.

But some advocates and lawmakers have been frustrated with what they see as the slow pace of progress. Michael Carey, an advocate for the developmentally disabled whose son with autism died in state care in 2007, said he was concerned that the governor was waiting to address the issue until after legislative budget negotiations, which could make it more difficult to find money for new programs.

"It's gross negligence that that report has not come out, and it's beyond frustrating," Mr. Carey said, adding, "The reforms to date are baby steps towards monster problems." And Senator Roy J. McDonald, the chairman of the State Senate's mental health committee, sent a letter this month to the governor urging him to turn over the report "so that we can begin working towards enacting long overdue protections and safeguards."

The Times last year identified numerous problems with the state's care for the developmentally disabled: only 5 percent of abuse accusations were forwarded to law enforcement, and employees who physically or sexually abused the disabled were often transferred among group homes instead of being fired.

Ten percent of deaths of the developmentally disabled in state care were listed in a state database as having occurring from unknown causes, suggesting widespread failures in efforts to determine why people die in state care.

At the same time, executives at some nonprofit organizations hired by the state to care for the disabled have been earning seven-figure annual compensation packages and taking a wide range of Medicaid-financed perks for themselves and their friends and families.

The state report, a 105-page document called "The Measure of a Society: Protection of Vulnerable Persons in Residential Facilities Against Abuse and Neglect," critiques the practices at six state agencies that oversee residential programs for vulnerable populations, at an annual cost of $17.9 billion. The report's principal author was Clarence Sundram, who was hired by Mr. Cuomo a year ago as a special adviser on vulnerable people. Mr. Sundram had been named by Gov. Hugh L. Carey to lead the Commission on Quality of Care, and he ran the commission for two decades until he left amid a disagreement with the administration of Gov. George E. Pataki.

In his report, Mr. Sundram found inconsistent data about accusations of abuse and neglect at state-run facilities. Some agencies train their investigators; others do not. Evidentiary standards vary. And definitions of abuse or neglect vary depending upon which agency has oversight.

The report found that residential schools run by the Education Department did not track abuse claims, while the State Health Department had "no reliable data" for accusations at its homes for mentally ill adults. At the large institutions overseen by the Office for People With Developmental Disabilities, the report found 119.68 abuse claims for every 100 beds.

The homes monitored by the Health Department have been a particular concern for a decade, since a series of articles in The Times in 2002 called attention to abuse there. Nonetheless, the report found, the department has few standards for investigating its homes: the agency's regulations "do not directly address an operator's responsibility to investigate incidents or allegations of abuse," the report concluded.

The Office of Children and Family Services also has few standards to determine when and how to investigate abuse accusations at some facilities. And the Education Department does little to oversee its programs for the disabled, which include two residential schools — one for the deaf and one for the blind — with a total of 200 beds, as well as educational programs at nonprofit residential schools serving 2,500 students.

The department does not require schools to have incident-reporting or investigation policies, and does not require abuse and neglect investigations, relying on the Office of Children and Family Services to conduct child-abuse inquiries.

The Education Department, which reports to the State Board of Regents and not to the governor, said the Sundram report highlighted "the need for systemwide reform"

The department "supports change that would enhance protections for vulnerable children and adults in residential settings across New York State and in out-of-state facilities," said its spokesman, Tom Dunn.

The report recommended several changes to state laws and regulations in an effort to prevent and better respond to abuse of the vulnerable. But it continues to rely to a large extent on self-policing, which could be a point of criticism among advocates.

"These human services systems did not arrive overnight to the point at which they find themselves, nor will they get to a dramatically better level of performance immediately," the report said. "But there is a need to begin the process of reform with a sense of urgency."

One proposed law would require the establishment of a 24-hour hot line to report abuse of adults in state care — the state already has a child-abuse hot line — as well as the creation of a single entity to review abuse accusations regardless of the agency involved. Another proposed law would bar people with convictions for violent felonies and sex crimes from jobs with state agencies, or with state-contracted nonprofits groups, that provide care for the vulnerable.

Because the current charge often filed against those accused of abuse — endangering the welfare of an incompetent or physically disabled person — is a misdemeanor, the report also proposes creating new offenses with tougher penalties to prosecute such crimes.

During arbitration proceedings against employees accused of abuse, a representative of the abused vulnerable person should also be present, the report suggests. And, the report says, the state should follow through with a promise to establish specific penalties for offenses by abusive employees, a concept that the Civil Service Employees Association agreed to during labor negotiations months ago.

August 2, 2011

Reaping Millions in Nonprofit Care for Disabled

By RUSS BUETTNER

Medicaid money created quite a nice life for the Levy brothers from Flatbush, Brooklyn.

The brothers, Philip and Joel, earned close to $1 million a year each as the two top executives running a Medicaid-financed nonprofit organization serving the developmentally disabled.

They each had luxury cars paid for with public money. And when their children went to college, they could pass on the tuition bills to their nonprofit group.

Philip H. Levy went as far as charging the organization $50,400 for his daughter's living expenses one year when she attended graduate school at New York University. That money paid not for a dorm room, but rather it helped her buy a co-op apartment in Greenwich Village.

The rise of the Levy brothers, from scruffy bearded social workers in the 1970s to millionaires with homes in the Hamptons, Sutton Place and Palm Beach Gardens, reveals much about New York's system for caring for the developmentally disabled — those with conditions like cerebral palsy, Down syndrome and autism.

The state spends, by far, more than any other caring for this population: $10 billion this year, and roughly 20 cents of every dollar spent nationally.

More than half of that money goes to private providers like the Levys, with little oversight of their spending.

And the providers have become so big and powerful that they shape much about how the system operates, from what kinds of care are emphasized to how much they will be paid for it.

"They're bigger than government in some ways," said Thomas A. Maul, former commissioner of the state's Office of Mental Retardation and Developmental Disabilities. "That isn't what our system was supposed to be."

The organization run by the Levys, the Young Adult Institute Network, has been among the most aggressive, and is now the largest operator of group homes for the state, collecting more than $1 billion from Medicaid over the past decade and running homes with a total of 700 beds, along with day programs, a school, dental care and transportation for the developmentally disabled.

The organization and the Levys have earned many admirers in the field for the quality and range of their programs. They are known for recruiting and keeping good employees, many of whom spend decades with the organization.

But their spending is seldom scrutinized, and, even when state officials turn up questionable expenses, there are few consequences.

The state, of course, has a financial interest in maintaining and expanding the programs, which bring more federal money and more jobs, especially to areas upstate, where many of the nonprofit organizations are major employers.

At the end of June, two days after The New York Times asked about the spending for his daughter's apartment, Philip Levy, 60, abruptly retired as chief executive. Joel M. Levy, 67, also departed in June, after serving as a $250,000-a-year part-time consultant following his departure from the chief executive's position in 2009.

A spokesman said the changes were unrelated to the inquiry by The Times.

Filling a Vacuum

Philip and Joel Levy were running Saturday night bingo games to support a tiny program for 15 developmentally disabled people in the early 1970s when their whole world changed.

In 1972, Geraldo Rivera, then a young reporter at WABC-TV, found his way inside the Willowbrook State School on Staten Island, a state-run institution that housed some 5,000 developmentally disabled residents in deplorable conditions. His footage showed naked children huddled on floors, feces smeared on walls, and an attendant oddly grinning through the darkness.

Public outrage exploded. A lawsuit brought by a parents group, the New York State Association for Retarded Children, resulted in a court order that forced the state to quickly move thousands of people into smaller community homes.

The state released a wave of public money and turned to nonprofit providers, which opened more than 100 group homes from 1976 through 1979. The Young Adult Institute, founded by a psychologist and his wife in 1957, emerged as a leader, opening and operating a dozen group homes.

The Levy brothers were determined to be a part of the revolution in care, and ascended at the Young Adult Institute, eventually taking over the top jobs in 1979: Joel as executive director and Philip as associate executive director. Their ambition to expand sometimes conflicted with the views of the network's board of directors, made up mostly of parents of children with developmental disabilities, who felt that the organization should remain small and focused on their children.

Over the years, the parents were replaced by professionals from other fields who supported growth.

"They were the most entrepreneurial folks that I ever met," said Barbara B. Blum, who was in charge of the deinstitutionalization effort for New York. "When we were under court order to provide all kinds of services, the Levy brothers recognized the fact that there really was a vacuum, and they walked into it."

Ms. Blum credited the brothers with persuading first-rate dentists, doctors and other medical professionals — "who wouldn't have touched some of the folks at Willowbrook," she said — to treat developmentally disabled people.

The Young Adult Institute joined with other nonprofit providers to form a lobbying group, and, as the programs and spending multiplied, the relationship between the state and the providers gradually shifted.

The providers gained more sophistication, expertise and power.

The providers and officials from the Office of Mental Retardation and Developmental Disabilities — now called the Office for People With Developmental Disabilities — met monthly to agree on new programs, expansion of existing programs and reimbursement rates. Then, together with the agency officials, they would lobby the Legislature and the governor's office for the money.

The providers became powerful advocates for the people in their care, and savvy strategists, alert to opportunities to increase financing.

In the early 1980s, Paul J. Castellani, a former official at the state agency, was overseeing the design of an algorithm that determined reimbursement rates for each developmentally disabled individual, based on his or her level of impairment. The formula was supposed to be closely held. But state officials suspected that a consultant to the providers had learned that vision problems greatly increased the rates paid.

Suddenly, the nonprofit providers began reporting a big increase in the number of individuals in their care who had trouble seeing. "We called it the day everyone went blind," said Mr. Castellani, the author of a book about the New York system of caring for the developmentally disabled.

The Levys were especially resourceful. As state financing for creating new group homes slowed in the early 1990s, they expanded into other services for developmentally disabled people, including a preschool and kindergarten, medical clinics and a jobs program. In 1998, revenue at their organization topped $100 million for the first time.

That year, the state resumed its effort to establish group homes, offering a new wave of financing for nonprofit groups to develop them, even as other states shifted their focus to less expensive care, like helping people find and stay in apartments of their own. The Young Adult Institute was again among the biggest developers, adding some 250 beds in group homes over the next decade.

And its group homes tend to be among the most expensive run by nonprofit providers, at least according to the documents the organization submits to Medicaid.

Inflated Costs

On the 11th floor inside the Young Adult Institute's busy West 34th Street headquarters in Manhattan, a team of fund-raisers works year-round to plan the organization's biggest annual events: a gala dinner at the Pierre hotel off Fifth Avenue that attracts celebrities like Al Roker and Harry Smith, and a Central Park fun run and walk.

But at the end of each year, from 1999 to 2010, when it came time for the organization to seek its Medicaid reimbursements, those fund-raising employees suddenly became group home administrative workers on accounting records, allowing for federal reimbursement of their salaries, according to federal prosecutors.

Prosecutors also said the organization submitted documents falsely asserting that all of its group home regional directors were licensed social workers — again inflating reimbursements for their salaries from Medicaid.

The prosecutors, from the United States attorney's office for the Southern District of New York, with assistance from the New York attorney general's office, brought a federal false claims lawsuit under seal in 2009 against the organization for the practices, which were brought to their attention by a whistle-blower, Richard Faden, the nonprofit group's longtime budget director. Mr. Faden, who was involved in the preparation of the documents, told prosecutors that for years expenses had been pumped up on annual financial reports to win higher reimbursements from Medicaid.

Last January, the organization agreed to pay $18 million in restitution and penalties to settle the suit, denying wrongdoing and saying it had made errors "under the complex cost-reporting rules that apply to Y.A.I.'s residential services." A spokesman last week added that the organization had decided that the settlement would be less costly and disruptive than protracted litigation.

In June, the nonprofit group submitted a plan to the state, saying it would repay the money in part by keeping its executive salaries flat for a period of years. Last month, the state rejected that proposal, saying it expected executive pay to be reduced.

Records show that, over the years, the organization and other providers have had remarkable success in winning appeals for higher Medicaid reimbursements from the state, resulting in more than $100 million in additional spending on group home care in the state over the past decade.

The nonprofit groups have wide latitude in appeals. If they can show they lost money, they can apply for more financing for, say, a resident who requires extra attention for behavioral problems or develops a medical issue, or for expenses like utilities that exceed their budget.

The appeals system generally receives little scrutiny. But in 1995, the Commission on Quality of Care and Advocacy for Persons With Disabilities, a state watchdog agency, released a report that found deep flaws in the process, including that the Young Adult Institute and six other nonprofit groups had been granted rate appeals to cover "excessive administrative costs."

The report was not received warmly by the nonprofit providers and their allies in Albany. The following year, the commission's budget was slashed by the Legislature.

The Young Adult Institute won more than $1 million in Medicaid appeals over the past seven years for a single group home — a residence on East 35th Street — one of the most expensive homes of its kind in the state. For care of the 28 developmentally disabled people housed there, whose needs are among the most acute in the nonprofit system, the organization received $7.2 million in 2010, or $700 per person per night.

Over all, the organization's rates for group homes at the intermediate care level, which require higher levels of care and supervision, rose by 48 percent from 2004 to 2010. Rates for similar group homes run by nonprofit providers around the state increased by 37 percent during the same period, while inflation was 15 percent.

'Medicaid Moguls'

Mr. Castellani, the former Office of Mental Retardation and Developmental Disabilities official, calls them "Medicaid moguls" — the nonprofit executives who have prospered while providing services to 135,000 developmentally disabled people in New York.

At the top of the class are the executives at the Young Adult Institute. No organization in the field in New York has paid its executives as well. Four of its executives received compensation in excess of $500,000 in 2009; none of its competitors had more than one executive at that level, according to a review by The Times of tax returns of the 100 largest providers.

That year, the last for which tax filings are available, Joel Levy collected more than $1 million and Philip was close behind, with $916,647. The chief operating officers, Thomas Dern and Stephen Freeman, earned $551,682 and $578,938.

Similar-sized nonprofit groups in New York pay an average salary to chief executives of $493,000, according to the Economic Research Institute, an executive compensation consulting company that advises companies, nonprofit groups and the Internal Revenue Service.

The Young Adult Institute also pays for its top executives to lease vehicles for personal and professional use. Accounting obtained by the state showed leases for two Lexuses and a Volvo. A spokesman declined to provide details about the cars, except to say the executives are allowed to select their own vehicles within certain price ranges.

Marcella C. Fava, who led the organization's board for more than 20 years, said the compensation was based on the findings of companies that specialize in compensation analyses.

She said the companies surveyed salaries among nonprofit organizations within the field, but also made allowances for the Young Adult Institute's "singular" size and complexity.

"Our retention programs have worked," she said, speaking of the broader management. "We've got a more experienced management team than, I think, any other agency."

Linda M. Lampkin, research director of the Economic Research Institute, was puzzled by Ms. Fava's explanation, saying her organization's database of tax returns filed by every nonprofit organization in the country shows nothing close to the Levys' compensation.

"If you look at what others are being paid, I don't know where their comparisons are coming from, because I can't find anything," she said.

At the Young Adult Institute, there were other elements of compensation within those big numbers, like the tuition compensation: for eight years ending in 2004, the organization directly covered the costs of college for children of several senior-level executives, including Philip Levy and Mr. Freeman.

The existence of the tuition program was discovered in 2009 by the state's Commission for Quality Care during a limited review of the organization in response to a tip. The results were never publicly released but were obtained by The Times under the state's Freedom of Information Law.

After The Times discovered property records showing the purchase of the co-op apartment for Philip Levy's daughter, the organization confirmed that the money from the tuition program had been used to buy her the West 12th Street home.

The Young Adult Institute spokesman declined to say how much was spent on education expenses, but in its final year, the program provided $132,611 to cover tuition for four children of three executives, including Philip Levy.

Ms. Fava said it was viewed as an attractive benefit for top executives. Several were confronting big college tuition bills at about the same time.

"This seemed to be a really nice retention tool," Ms. Fava said. "It had a quality to it, we're going to help you pay for your kids' college. So, sure, we could have increased their salary or given them a bonus. But this had a nicer, you know, cultural component to it."

The report also noted that a Young Adult Institute affiliate, the New York League for Early Learning, had paid the Levy brothers consulting fees of about $50,000 a year from 2007 through 2009, on top of their salaries. And it questioned other expenses, including lunches and dinners for executives and the $1,468 that Philip Levy spent to stay for two nights at the Beverly Hills Hotel in 2008, which he said was for a meeting with a possible donor.

The commission, which has no enforcement powers, suggested that the organization's board "consider carefully" whether certain expenditures "are compatible with the obligation of the board to act as a faithful steward of public funds." More than 95 percent of the organization's revenue comes from government sources, primarily Medicaid.

In June, two days after The Times e-mailed a Young Adult Institute spokesman seeking more detail about the tuition program, the Levy brothers ended their employment there. The organization announced the departures two weeks later in a press release, saying Philip Levy was retiring, but quoting him as saying he was looking forward "to a new stage of my career." The spokesman, Jesse Derris, said that Joel Levy's departure as a consultant had been expected, and that Philip Levy had been unable to come to terms on a new contract with the group's board.

The Levys appear to be financially well prepared for the next phase of their lives. Each received deferred compensation totaling about $1.8 million in 2008 and 2009.

Courtney Burke, commissioner of the Office for People With Developmental Disabilities, last week took a step toward reining in high executive salaries at the nonprofit groups. She sent a one-page letter to them on Tuesday seeking their assistance to develop "a consistent and rational model of compensation."

"Given the heightened concerns about the growth of Medicaid and Medicare, this compensation guidance should be established sooner rather than later," she wrote.

A spokesman for Ms. Burke said that if the providers were unable to agree on an approach, her office had the authority to write compensation standards into state regulations and contracts with providers.

Whatever concerns exist about executive compensation, the Young Adult Institute clearly has fans among families of developmentally disabled people.

Margaret Puddington said her 30-year-old son, Mark, had been participating in its programs for several years before he moved into a Young Adult Institute group home four years ago. Ms. Puddington said the organization excelled at hiring caring people, investing in training and supervising programs.

"Mark loves his life," she said. "I don't know what higher compliment there could be. He loves his staff. He loves his housemates. He loves his activities. They watch over him very, very carefully all the time."

During an interview at his office in May, Philip Levy declined to discuss his compensation or that of his brother. He repeatedly said how much he loved his work and said the public money had been well spent on services.

There was no indication during the interview that he would depart weeks later. "I think one of the things New York has to do is puff out its chest a bit and say, 'We are incredibly proud that we created the best system of care for people with developmental disabilities anywhere in this country,' " he said.

This article has been revised to reflect the following correction:

Correction: August 4, 2011

An article on Tuesday about executive salaries at Medicaid-financed nonprofit organizations that provide services to developmentally disabled people in New York misstated the surname of a whistle-blower in a federal lawsuit against one of the providers, the Young Adult Institute Network. His name is Richard Faden, not Fagan.

www.chicagotribune.com/news/local/ct-met-non-profit-salaries-20120802,0,7947183.story

chicagotribune.com

Nonprofits that use private management firms to pay executives can shield compensation from the public

The Illinois Department of Human Services has notified nonprofits that they must now disclose salaries and benefits of executives paid through private companies

By Matthew Walberg, Chicago Tribune reporter

August 2, 2012

As the head of an Illinois nonprofit that provides care and job training to the disabled and elderly, James Starnes was required to report publicly that his compensation more than doubled over four years, eclipsing $428,000 in pay and benefits.

But because his salary now comes from a private company he formed to run the day-to-day operations of the Galesburg charity, he didn't have to disclose publicly what he earned last year, Starnes said.

"That's private information," he said.

The use of for-profit companies to manage nonprofits has grown increasingly common in Illinois, a practice that has permitted organizations relying heavily on state money to shield pay levels from public scrutiny, critics say.

"Current IRS rules allow charities to hide what they pay their executives," said Daniel Borochoff, president of Chicago-based CharityWatch, which evaluates and rates nonprofit organizations. "There's a loophole that some of them are using to avoid transparency."

But the loophole may be closing. The Illinois Department of Human Services — one of the state's largest funding agencies — notified nonprofits in late June that they are now required to disclose the salaries and benefits of executives paid through private companies.

The new requirement took effect in the fiscal year that started in July, which means it's unlikely the information will be made public for at least another year.

The state agency said nonprofits that received $250,000 or more must release pay data for all employees, including those working for private companies. Next fiscal year it will lower the threshold to $25,000.

"This issue is of serious concern to the department, and we are taking steps to address it," DHS spokeswoman Kayce Ataiyero said.

Officials still don't know how widespread the practice is but have begun work to set up databases that will allow them to track such cases, Ataiyero said.

The Tribune revealed in June that executives at 18 major nonprofit organizations that rely on state funding for more than three-quarters of their revenue saw average annual pay increases of 4.3 percent in 2009 and 2010 and that many were making more than $150,000 annually. The average raise was double the rate employees in the private sector experienced during that same period.

Many of the executives were paid far more than the top officials at state agencies that fund the tax-exempt groups.

The pay data for those executives was listed in their organizations' annual federal tax filings, which are available to the public, unlike the nonprofits that use private management companies.

Illinois relies heavily on charities to provide health and social services to those in need, disbursing more than $9.8 billion to nearly 6,000 nonprofit organizations in fiscal 2011.

Over the past decade, the use of a private company to manage a nonprofit organization has grown more common, said Sheldon Holzman, former chairman of the Illinois CPA Society.

There are advantages to the approach, among them allowing for more progressive employee benefit plans and centralizing control of management and operations, he said.

In the case of the Galesburg organization, Bridgeway Inc., the arrangement allows more than a dozen related charities to pay a flat fee to the private company, which then provides the pay, benefits and other expenses incurred by Starnes and about 10 other executives who run the charities, Starnes said.

If extra management costs are incurred, they are borne by the company, he said.

Starnes said he doesn't see the need for the Department of Human Services' new payroll requirements, pointing out that Bridgeway and the related charities — which together employ 900 to 1,200 people — already open their books to virtually every agency that funds them as well as to independent accrediting organizations.

"If anything, we're over-regulated, and our costs go up astronomically because of the amount of regulation that's going on," he said.

Bridgeway relies on state funding for about 70 percent of its budget, and its related charities have received millions more from the state, records show.

Over the last several years, management expenses have been gradually shifted from the nonprofit to the company Starnes formed in 2008. By the 2011 fiscal year, that company was paid nearly $2 million to handle the day-to-day management of Bridgeway Inc. and its smaller affiliated nonprofits, records show.

A spike in his pay from 2005 to 2009, Starnes said, was due to IRS requirements that he take any deferred compensation accrued over his 30 years of service before retiring. He is now retired from the nonprofit but is still president as part of the contract between the company and the charity.

"Do I make pretty good money? Yes, I do," Starnes said. "Do I have a lot on my table? I have a huge amount on my table. I have 10,000 people that I care for every year in all of our entities. And so, you know, if you want to compare my job with the person that has a shelter that serves 23 families a year in a small town, I don't think they're comparable."

Just a few miles from Bridgeway's headquarters are the Galesburg offices of Frances House Inc., where CEO Tim Bledsoe and Chief Financial Officer Ron Wilson are both paid by companies the charity either hired or created to run major aspects of its operation.

Frances House and its affiliates provide residential care and health services to the elderly and disabled and rely heavily on state funding. The group received about $37 million from the state in 2010, of which about one-third went to Frances House, totaling about 86 percent of the charity's revenue for that year, records show.

The group of charities formed a company to provide "consulting services to its members and others" and paid it nearly $1.5 million, according to a copy of the organization's 2010 financial statement.

The statement notes that a second company, RFMS Inc., handles administrative and accounting duties for Frances House and its related organizations. Payments to the company from the group of charities totaled nearly $2.6 million in 2010, according to the statement.

Tax filings that year noted that Wilson — who is also the chief financial officer of RFMS — was paid $121,000 by RFMS. No compensation figure was given for Bledsoe, who could not be reached for comment.

Wilson declined to respond to questions about why the organization chose to employ private management companies.

Similarly, Bridgeway's 2011 tax filings provided no compensation figures for Starnes.

Charities are supposed to list compensation of top executives in a section that was added to the federal tax form in 2008, even if payments come from a related charity or for-profit company, according to a former head of the IRS Exempt Organization division, which oversees nonprofit groups.

"That was the intent of the change to the 990 (tax form), to capture that information and make it part of the public record," said attorney Marcus Owens, now a partner at the Washington law firm Caplin & Drysdale, where he represents nonprofits.

But Holzman, the former chairman of the CPA group, said it isn't unusual for organizations to reach different conclusions about what kinds of compensation they must disclose.

"There's some room for interpretation," he said. "Some of the issues are not as black and white as the IRS might think. They keep refining it, but they're not quite finished yet."

Owens said he believes some organizations use private management to make it more difficult for the agencies that fund them to find out what executives are being paid.

State Rep. Greg Harris, D-Chicago, is chairman of the House's Human Services Committee, which exercises oversight over the Department of Human Services and other state agencies. Harris said he had concerns about the lack of public reporting.

"When there is a lack of transparency and there are large amounts of money going from a nonprofit to a related for-profit company, it raises a red flag for me as a funder," he said.

Nonprofits that use for-profit companies to pay their executives should be required to make their pay levels public if they want to continue to receive state funding, Harris said.

He has asked DHS to review the grants and contracts awarded to Bridgeway and Frances House.

"If there are organizations that take their not-for-profit funds and transfer them to for-profit entities for legitimate purposes, they shouldn't have any problem disclosing that," he said.

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GuideStar -

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Tribune analysis: Average raise in 2009-10 for CEOs of 18 nonprofits double that for private-industry workers

State agency working on plan to limit how much of groups' cost, executive pay can be covered by public money

By Matthew Walberg and Joe Mahr, Chicago Tribune reporters

June 21, 2012

During the height of the recession, employees at one of the area's biggest nonprofits were not supposed to get pay raises greater than 6 percent — but that didn't apply to the CEO.

The board for the Community and Economic Development Association of Cook County gave CEO Robert Wharton a 10 percent raise in 2009, followed by a 15 percent raise in 2010, boosting his total compensation to $275,000 to run a nonprofit that gets more than 90 percent of its money from taxpayers.

Wharton's raises are part of a larger trend in the pay of executives whose groups rely significantly on money from state government — a trend that has drawn fire from critics concerned that taxpayers are being gouged.

A Tribune analysis of financial filings of 18 such nonprofits found that their executives received an average of 4.3 percent in pay raises in 2009 and 2010, when the economy was sputtering. That's double the average compensation boost for private-industry workers, according to federal wage data.

Many of these nonprofit executives already earn far more than the top state officials who dole out tens of millions of dollars to these agencies every year. At one nonprofit that aims to help the working poor, the director had her pay nearly double in eight years, to about $340,000.

Supporters defend the raises as comparable to for-profit CEOs, who can receive generous salary increases even in bad times if their leadership is deemed extraordinary and in demand.

But Illinois officials have joined a national trend of reconsidering such salaries, with one major state agency saying it's working on a plan to limit how much of an organization's administrative costs and executive pay can be covered by public money.

"The Department of Human Services strongly disagrees with the practice of nonprofit executives receiving such high salaries that are primarily subsidized by tax dollars, especially during the current fiscal crisis," spokeswoman Januari Smith Trader said in a written response to the Tribune's findings.

That concern is raised as other states, including Massachusetts, consider ways to limit compensation.

"I think, ideally, there ought to be very strict federal guidelines, but I think in states with heavy concentrations of nonprofits, like Massachusetts and Illinois, the oversight is grossly inadequate," said Massachusetts state Sen. Mark Montigny, a Democrat pushing a proposal there.

"The public is angry," Montigny said, "and when they see this abuse, they want their pound of flesh."

The top raises

Illinois relies greatly on nonprofits to provide social services, medical care and other assistance to the needy. In most cases, taxpayer dollars, in the form of contracts or grants, cover the services these organizations provide, as well as at least some administrative costs.

Nonprofits engaged in this publicly funded work often base their top executives' compensation on what they say similar nonprofits pay. An executive's salary can stay flat or jump depending on which organizations are used as benchmarks.

The Internal Revenue Service requires nonprofits to disclose whether they base salaries on a review of what other agencies pay. But they don't have to publicly reveal the names of those agencies, or how they reached their decision. Another obstacle to transparency is that it can take up to two years for the public to obtain such basic tax data. The freshest nonprofit data available is from calendar year 2010.

The Tribune took that pay data and analyzed it for executives of nonprofit organizations with budgets greater than $10 million, with at least 75 percent of their funding coming from the state. The newspaper focused on 18 organizations whose top executive remained the same in 2009 through 2010 — enough time to look at two typical cycles of raises during the heart of the recession.

Among the recipients of the most generous raises:

•James Hogan, with Cornerstone Services Inc. The nonprofit serves the physically and mentally disabled in Will and Kankakee counties. He received a 1 percent raise in 2009 and a 25 percent raise in 2010, taking his total pay to in excess of $244,000. Those raises came during a time when Cornerstone publicly lamented the difficult fiscal climate of nonprofits, particularly those receiving government grants.

Hogan, who retired last year, could not be reached for comment. But Cornerstone's board said in a statement that officials set Hogan's salary after reviewing his performance and studying pay for comparable CEOs.

•Mary Hollie, with Lawrence Hall Youth Services. The organization provides residential care and other services to at-risk youths in the Chicago area. Hollie received a 7 percent raise in 2009 and a 9 percent raise in 2010, ending the year with nearly $284,000 in total pay.

In a written statement, board president Jeff Singleton said Hollie's pay was based on performance and comparable executives' pay, a process that "retains the talent we need to successfully lead an organization operating in a complex — and often turbulent — field."

•Wharton's massive nonprofit, CEDA, helps run or oversee programs to aid the poor or unemployed, from job training to home weatherization.

At the time Wharton was getting his 10 and 15 percent raises, he was accused of bilking a former secretary with dementia out of more than $60,000. He denied wrongdoing, but a court ordered him to pay her back. The board fired him from the $275,000-a-year job earlier this year after the Tribune wrote about the case.

When asked about Wharton's raises, a CEDA spokeswoman said employees cannot get more than 6 percent increases. Informed that Wharton's pay rose higher, the spokeswoman referred questions to board president Lisa Anthony, who said she would ask a spokesperson to respond. No one did.

Conversely, some nonprofit CEOs took pay cuts, or slight raises, including Martha Warford.

Warford oversees the Beverly Farm Foundation in downstate Godfrey, which runs an 80-acre community for nearly 400 developmentally disabled residents. It has a budget comparable to Cornerstone and Lawrence Hall's, but Warford was paid about $106,000 in 2010. That was after receiving a 1.1 percent raise in 2009 and a 0.6 percent raise in 2010.

Warford said she declined offers from her board to significantly raise her pay because the nonprofit's budget was too tight.

"If I can't provide a decent increase for my employees, I don't feel that it's justified that I get one," she said. "And I'm not in this for the money."

Top pay

Among the 18 nonprofits the Tribune studied, 14 executives made more in 2010 than the $150,000 threshold for state Cabinet-level officials who oversee the contracts given to the organizations.

Nonprofit officials argue that it's not a fair comparison, because public-sector employees qualify for lucrative pensions and other benefits that nonprofit executives might not get. Even a longtime advocate for lean government agreed that the $150,000 standard alone might be unfair.

"It's not a black-and-white issue," said Tom Johnson of the Taxpayers' Federation of Illinois. "It's hard to say that you shouldn't pay these executives more than $150,000 if they're competing in an industry sector to get appropriate talent."

Nonprofits are left to interpret loose IRS guidelines that say their executives should have pay based on the market. And that can be abused, said Lindsay Nichols, a spokeswoman for the nonprofit charity watchdog GuideStar.

Nichols' group says executive pay should be based on market rates, and it has done extensive studies on executive compensation, most recently for 2009. GuideStar provided an Illinois-specific analysis to the Tribune that, for example, found about $278,000 was the average pay that year for CEOs whose nonprofits focused on human services and had a budget of $25 million to $50 million.

The Chicago-based Safer Foundation fits that criteria. It helps former convicts get jobs and job training, and in 2009 it paid its CEO, Diane Williams, more than $350,000 in total compensation.

In a written statement, the board members who approve Williams' compensation lauded her efforts, although they kept her pay relatively flat for 2010.

"Diane Williams is worth every dollar we pay her and more, and the taxpayers of Illinois have received a tremendous return on their investment in the programs Safer Foundation manages on their behalf," the board said.

Also fitting the GuideStar criteria is Chicago-based Illinois Action for Children, which primarily helps working poor families obtain child care. Its CEO, Maria Whelan, had her pay skyrocket since taking over in 2001.

In 2002, Whelan was paid $179,000. By 2010 she received about $340,000, a cut from the nearly $349,000 she was paid in 2009.

Her 2009 pay put her more than 25 percent above the GuideStar average for a nonprofit of that size and type in Illinois, but a spokesman for the nonprofit, Adam Summers, said it used an outside firm that studied comparable CEO pay. Summers characterized Whelan's pay as "competitive but on the conservative side in relation to our market competitors."

Raising questions

The Massachusetts Senate has twice passed a bill, including this year, that set caps on executive pay at all nonprofits, not just those receiving public money, and not just large ones.

"A lot of the abuse is actually going on at the smaller organizations because the salaries are disproportionately higher," Montigny said. "It's all of these midlevel organizations that fly below the radar where their executives might be making two or three times the governor's salary and there's no accountability."

And in Florida, reports of exorbitant pay for some nonprofit executives sparked a proposal to limit the pay of those whose agencies rely on public funding.

But only New York has set caps, after Gov. Andrew Cuomo this spring ordered state agencies to limit pay at nonprofit vendors to $199,000, although nonprofits can raise private money to boost the pay or seek special permission from the state.

In Illinois, no caps have been imposed.

State Sen. Dave Syverson, R-Rockford, sits on committees that oversee appropriations and grant-issuing departments. The state, he said, should question pay on a case-by-case basis. But he said some nonprofit CEOs might be worth the money if they can raise private cash to cover the higher salary and save taxpayers money.

"The state has the ability to ask some questions as to how they can afford to pay these kinds of benefits in this climate," Syverson said.

In the absence of legislation, one of the biggest contractors with nonprofits, the Department of Human Services, has begun asking those vendors it funds through grants or bidded contracts to submit additional audits.

The state agency also is "reviewing and updating various policies to address the issue of executive compensation," Smith Trader said.

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